IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 809 OF 2005
WITH
CIVIL APPLICATION NO.2025 OF 2005

Mrs. Chandravathi Sunder Salian. ..Appellant.

V/s.

Bombay Municipal Corporation ..Respondent.

Mr.R.A.Thorat for appellant.

Mr. Xavier for BMC.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 12, 2006.

P.C. :

1. Heard counsel for the parties. Perused the materials produced at the time of hearing of this appeal for admission.

2. The first submission canvassed by Mr.Thorat is that the structure in question was an enclosure of the set back terrace with M.S. Grill Work and A.C.Sheet roof lading and fibre roof admeasuring 880 sq.feet as shown in the sketch referred to in the notice under section 351 dated 3rd January, 1998. It is submitted that such a structure was not covered by section 342 of the Act; and as a consequence, action under section 351 was ill-advised. Mr.Thorat

contended that only if the structure/building was to qualify the requirements of section 342 and 347, action under section 351 of the Act can proceed. This submission does not commend to me. In my opinion, in view of the expansive provision it would cover the nature of structure in respect of which action is proposed under section 351 of the Corporation Act under the impugned notice. Section 342(a) refers to any addition to a building or change of existing user; and clause(b) relates to any alteration or repairs to be made in a building involving the removal, alteration or re-erection of any part of the building except tenantable repairs. This provision is expansive to cover the impugned action in relation to the suit structure within the meaning of section 351 of the Act. To get over this position, Mr. Thorat would contend that the suit structure was not a building. Even this submission overlooks the purport of section 3(s) which defines the word "building" which includes a house, out-house, stable, shed, hut[tank(except tank for storage of drinking water in a building or part of a building)] and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever. Going by this definition, it is incomprehensible as to how the suit structure will

not qualify the requirement of section 3(s) of the Act. The structure, even if of fibre sheet, will be covered by expansive expression-made of "any other material whatever", occurring in section 3(s) of the Act. Thus, it is not possible to countenance the argument that the impugned action under section 351 was inappropriate and illegal as is contended.

3. It was then contended that the structure was authorised; which position is substantiated by the evidence of P.W.2. However, I agree with the submission of the Respondent that as is rightly observed by the trial court, the P.W.2 was a State Excise Department Officer. He was not at all competent officer to depose as to whether the suit structure was authorised or otherwise. No documentary evidence is relied by the appellant even before this court to support the plea that the structure is authorised. It is common knowledge that the Certificate given by the Excise Department officer is for the limited purpose of issuance of liquor licence. Undisputedly, no document has been produced on record to suggest that the structure in question was erected after taking prior permission of the Corporation. As a matter of fact, P.W. 1 has admitted in his evidence, as rightly observed by the

trial court that the structure has been erected and/or set back terrace has been covered without taking prior permission of the corporation. Viewed in this perspective, no fault can be found with the conclusion reached by the court below in dismissing the suit, as the structure in question is unauthorised. Action under section 351 of the Act ought to proceed and taken to its logical end. No case for admission of the appeal is made out. Hence this appeal should fail.

4. At this stage, Mr. Thorat would contend that the appellant be given an opportunity to approach the appropriate authority for regularisation of the subject structure. Counsel appearing for the Corporation however opposes this request on the ground that unless the appellant was to state on affidavit before this court that additional FSI is still available then question of considering the request for regularisation will not arise. To my mind, however, this aspect will have to be considered if request for regularisation is made by the appellant to the appropriate authority. Suffice it to observe that the appellant can be given six weeks' time to approach the appropriate authority [Executive Engineer, Building proposal(Western Suburban) H & K]

to make necessary application for regularisation of the suit structure; and if such application is made the authority will decide the same within three weeks from the date of receipt of the application. The appellant shall extend all necessary corporation for early disposal of the said application. For this limited purpose, status quo as of today with regard to the suit structure be maintained for a total period of nine weeks from today.

5. Appeal as well as cognate Civil Application is dismissed on the above terms.

6. It is made clear that allowing the appellant to make application for regularisation is not an expression of opinion either way, with regard to the merits of that application. It will be open to the authority to decide that application on its own merits in accordance with law.